

Patent
Serial No. 10/562,896
Appeal Brief in Reply to Final Office Action of August 3, 2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of
JOHANNUS LEOPOLDUS BAKX

Atty. Docket
NL 030845

Serial No. 10/562,896

Confirmation No. 6920

Filed: DECEMBER 29, 2005

Group Art Unit: 2627

Title: RECORDING METHODS AND DEVICES FOR RECORDING INFORMATION ON
DUAL LAYER RECORDABLE DISKS

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Board of Patent Appeals and Interferences
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Sir:

Appellant herewith respectfully presents a Brief on Appeal as follows, where a Notice of Appeal is concurrently filed:

REAL PARTY IN INTEREST

The real party in interest in this appeal is the assignee of record Koninklijke Philips Electronics N.V., a corporation of The Netherlands having an office and a place of business at Groenewoudseweg 1, Eindhoven, Netherlands 5621 BA.

RELATED APPEALS AND INTERFERENCES

Appellant and the undersigned attorney are not aware of any other appeals or interferences which will directly affect or be directly affected by or having a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Claims 1-6 are pending in this application, where claims 7-20 are canceled. Claims 1-6 are rejected in the Final Office Action mailed on August 3, 2009. Claims 1-6 are the subject of this appeal.

STATUS OF AMENDMENTS

Appellant did not file a response to a Final Office Action mailed August 3, 2009. This Appeal Brief is in response to the Final Office Action mailed August 3, 2009, that finally rejected claims 1-6.

SUMMARY OF THE CLAIMED SUBJECT MATTER

The present invention, for example, as recited in independent claim 1, shown in FIG 1 and described on page 3, lines 3-30 of the specification, is directed to a method for recording data stream on a dual layer recordable disk having a first layer L0 and a second layer L1. The method comprises performing an Optimum Power Control (OPC) procedure for determining an actual optimum writing power. The Optimum Power Control procedure is performed in variably located OPC-areas on the disk that are variably located on the first layer L0 and the second layer L1. At least one of the variably located OPC-areas is positioned on the second layer L1 and is located relatively close to a radius where the data stream switches from the first layer L0 to the second layer L1.

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GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1-6 of U.S. Patent Application Serial No. 10/562,896 are unpatentable under 35 U.S.C. §102(b) over U.S. Patent Application Publication No. 2003/0063535 (Shoji).

ARGUMENT

Claims 1-6 are said to be unpatentable under 35 U.S.C. §102(b) over Shoji.

Appellant respectfully requests the Board to address the patentability of independent claim 1, and further claims 2-6 as depending from claim 1, based on the requirements of independent claim 1. This position is provided for the specific and stated purpose of simplifying the current issues on appeal. However, Appellant herein specifically reserves the right to argue and address the patentability of claims 2-6 at a later date should the separately patentable subject matter of claims 2-6 later become an issue. Accordingly, this limitation of the subject matter presented for appeal herein, specifically limited to discussions of the patentability of claim 1 is not intended as a waiver of Appellant's right to argue the patentability of the further claims and claim elements at that later time.

Shoji is directed to a "method of determining a recording power used to record information to an optical disc, includes carrying out test recording which records predetermined data to a

predetermined area of the optical disc to determine the recording power. (Shoji, Abstract; emphasis added) That is, the test recording to determine the recording power is performed at a fixed or predetermined test recording area 202, as recited throughout Shoji, such as paragraphs [0057]-[0061] and shown in FIG 2.

In stark contrast, the present invention as recited in independent claim 1, amongst other patentable elements recites (illustrative emphasis provided) :

 said Optimum Power Control procedure being performed in variably located OPC-areas on the disk that are variably located on the first layer and the second layer, at least one of the variably located OPC-areas is positioned on the second layer and located relatively close to a radius where the data stream switches from the first layer to the second layer.

Performing Optimum Power Control procedure in variably located OPC-areas is nowhere disclosed or suggested in Shoji. Rather, Shoji discloses performing test recording at fixed or predetermined test recording area 202.

Even, assuming arguendo, that this feature is disclosed in Shoji, there is still no disclosure or suggestion in Shoji of positioning "the variably located OPC-areas ... on the second layer

and located relatively close to a radius where the data stream switches from the first layer to the second layer," as recited in independent claim 1. (Illustrative emphasis provided)

Page 3, line 2, of the Final Office Action alleges that paragraph [0139] of Shoji discloses this feature. Appellant respectfully disagrees and submits that paragraph [0139] merely states that the "light pickup does not need to return from outer periphery to inner periphery at the changeover of the recording layer when continuous data is recorded across two recording layers." Paragraph [0139] of Shoji refers to previous paragraphs that describe various modes concerning the movement directions of the light spot and the recording on the first and second recording layers.

In particular, the entire paragraph [0139] of Shoji specifically recites:

According to configuration as described above, in multi-layer optical discs, there achieved are effects in that the light pickup does not need to return from outer periphery to inner periphery at the changeover of the recording layer when continuous data is recorded across two recording layers.

It is respectfully submitted that such a disclosure has

nothing to do with the location of any variably located OPC-areas being positioned on the second layer relatively close to the radius where the data stream switches from the first layer to the second layer, as recited in independent claim 1. Rather, paragraph [0139] of Shoji merely discloses having the direction of light spot and recording on the two layers, such that the light pickup does not need to return from the outer to the inner periphery at the changeover of the recording layer when continuous data is recorded across two recording layers.

Accordingly, it is respectfully requested that independent claim 1 be allowed. In addition, it is respectfully submitted that claims 2-6 should also be allowed at least based on their dependence from independent claim 1 as well as their individually patentable elements.

In addition, Appellant denies any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Appellant reserves the right to submit further arguments in support of the above stated position,

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should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

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CONCLUSION

Claims 1-6 are patentable over Shoji.

Thus, the Examiner's rejections of claims 1-6 should be reversed.

Respectfully submitted,

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October 2, 2009

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CLAIMS APPENDIX

1. (Previously Presented) A recording method for recording data stream on a dual layer recordable disk having a first layer and a second layer, the method comprising an act of performing an Optimum Power Control (OPC) procedure for determining an actual optimum writing power, said Optimum Power Control procedure being performed in variably located OPC-areas on the disk that are variably located on the first layer and the second layer, at least one of the variably located OPC-areas is positioned on the second layer and located relatively close to a radius where the data stream switches from the first layer to the second layer.

2. (Previously Presented) The recording method as claimed in claim 1, wherein a location of the at least one of the variably located OPC-areas depends on the amount of information to be recorded on the disk.

3. (Previously Presented) The recording method as claimed in

claim 2, wherein an OPC area of the variably located OPC-areas is located in the Middle Zone of the at least one of the layers of the dual layer disk.

4. (Previously Presented) The recording method as claimed in claim 1, comprising a further step of performing a further Optimum Power Control (OPC) procedure, said further Optimum Power Control procedure being performed in a further OPC-area located at a fixed position on at least one of the layers of the dual layer disk and reserved for use by the further Optimum Power Control procedure.

5. (Previously Presented) The recording method as claimed in claim 4, wherein the further Optimum Power Control procedure is performed in a first fixed OPC-area located on the first layer and in a second fixed OPC-area located on the second layer.

6. (Previously Presented) A recording device for recording information on a dual layer recordable disk adopted for using the method according to claim 1.

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Claims 7-20 (Canceled)

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EVIDENCE APPENDIX

None

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RELATED PROCEEDINGS APPENDIX

None